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Woman Loses Race Discrimination And Defamation Case

Tamika Jones, an African American woman, began working for Res-Care Indianapolis in 2001. She started out as a program director, then became a scheduler and later became a human resources representative.

Jones said that each time she was transferred, her job responsibilities increased substantially and thus she considered both transfers to be promotions. However, her pay did not increase. She said that when white employees accepted new jobs with greater responsibilities, their pay did increase.

Jones said that when she wanted to take time off, she had to submit a written paid time off request. White employees were not required to do this. She said that her supervisor turned down her request for tuition reimbursement but approved similar requests from white employees.

Jones said that in April of 2005, she applied for the job of executive director of the Sheridan Res-Care facility. She said Shane McFall, who conducted the interview, did not engage in a substantive discussion with her about the job. Instead, she said he made several comments suggesting Jones would not be a good fit for the Sheridan job because of her race. Jones was not hired.

Later that year, Jones applied for a director of human resources position in Indianapolis. She had experience as an interim HR director. Again, McFall conducted the interview. Jones said the interview was "pro forma." McFall hired a white woman for the job.

In 2005, McFall learned that Jones had signed for some employee lunches that had been improperly charged to Res-Care. Five employees, including Jones, were suspended without pay. One of the five was terminated; the other four, including Jones, returned to work.

In June of 2006, Jones applied for a director of supported living position. She said that McFall made it clear she would not be hired for this job because she was not "on his team." He hired a white applicant.

In August of 2006, Jones filed a complaint of discrimination with the EEOC, citing her failure to be promoted to the human resources job and the company's refusal to reimburse her for tuition.

In September, 2007, her supervisor told her that if she varied her schedule by more than 15 minutes

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Technology And The ADA

The Department of Justice recently entered into settlement agreements with colleges and universities that used the Kindle DX in the classroom as part of a pilot study with Amazon. The Kindle DX is an electronic book reader that may be a great tool for some students, but it's inaccessible to students with visual disabilities. It doesn't have an accessible text-to-speech function.

Under the terms of the settlement agreement, the colleges and universities agreed not to purchase, require or recommend the use of the Kindle DX or other dedicated electronic book reader unless the device is fully accessible to people with visual impairments, or unless the schools provide a reasonable accommodation or modification so that students with visual impairments may acquire the same information, engage in the same interactions and enjoy the same services as sighted students with substantially equivalent ease of use.

The texts of these agreements may be viewed by going to www.ada.gov and searching for Kindle.

As the DOJ said in its press release announcing the settlement, "technology is the hallmark of the future, and technological competency is essential to preparing all students for future success. Emerging technologies are an educational resource that enhances the experience for everyone, and perhaps especially for students with disabilities. Technological innovations have opened a virtual world of commerce, information and education to many individuals with disabilities for whom access to the physical world remains challenging. Ensuring equal access to emerging technology in university and college classrooms is a means to the goal of full integration and equal educational opportunity for this nation's students with disabilities. With technological advances, procuring electronic book readers that are accessible should be neither costly or difficult." ♦

Credit And Criminal Histories

Many employers check applicants' credit and criminal histories before offering them a job. The thinking is, if an applicant has not paid her bills on time or has been convicted of a crime, she may have competency and trustworthy issues. If she can't handle her finances, or if she broke the law, maybe she can't handle a job. But with the economic woes of late, many people have had credit problems beyond their control. And people with criminal convictions who have served their time arguably deserve a second chance.

The U.S. Equal Employment Opportunity Commission says that employers should avoid asking an applicant about her credit rating or other related issues because "they tend to impact more adversely on minorities and females." They suggest that employers not ask these questions unless they can show that such information is essential to the particular job in question.

In 2009, the EEOC sued an employer from Dallas, Freeman Companies, because Freeman allegedly had "rejected job applicants based on their credit history and if they have had one or more of various types of criminal charges or convictions. The practice has an unlawful discriminatory impact because of race, national origin and sex, and is neither job-related nor justified by business necessity," according to the EEOC. That case is still pending.

The EEOC says that employers should not reject applicants solely because of their criminal history and advises employers to consider the nature of the job, the seriousness of the offense and how long ago it occurred. ♦

Race Discrimination Case (continued from page 1)

a day, she had to confirm the variation with her supervisor. Her supervisor said she did this because Jones' unauthorized schedule variations vastly exceeded those of any other employee under his supervision.

Jones had approval to take some time off in September or October for her wedding. She took the time off but came back three days early because of changes to her new husband's military schedule. He supervisor wrote her up because she had not gotten approval for her schedule variation.

She sued, alleging she had been discriminated against on the basis of race and retaliated against because she had filed a complaint. The Court found that most of her allegations were time-barred.

The only allegation that survived the statute of limitations was her allegation that she was retaliated against (written up about the scheduling issue) because she had filed a complaint. The Court found that the "correction action alone does not rise to the level of an adverse employment action."

Jones said that there was "a palpable tension" at the time she received the write-up because of her pending litigation against Res-Care. She said this tension, combined with the write-up, rose to the level of an adverse employment action. The Court did not find this argument to be persuasive, saying "a plaintiff's subjective determination of tension in the workplace, without more, cannot constitute an adverse employment action absent a tangible job consequence."

The Court said that even if Jones could show she had suffered an adverse employment action, "she has not shown that it was causally related to her EEOC charge." She had no evidence tying the write-up to her complaint.

Jones also sued McFall for allegedly telling another employee that Jones was a "rat" or a "fink" and that she was not trustworthy. The Court did not find these statements to be defamatory. McFall made these comments to individuals in the workplace and did not publish them. Employers have a qualified privilege connected to what they say about employees if they say it in good faith, and Jones did not have evidence that McFall made these comments in bad faith. The case is Jones v. Res-Care, Inc., 2010 WL 2788505 (7th Cir. 2010). ♦

Walmart Update

In the October, 2010 issue of Rights Stuff, we reported that Walmart had asked the Supreme Court to decide if a sex discrimination lawsuit against the business could proceed as a jumbo class action lawsuit. In December, 2010, the Supreme Court announced it would hear the case.

The question for the high Court will not be whether Walmart discriminated against female employees. Rather, the question will be whether a single class action lawsuit is proper when the case includes charges of pay discrimination and lack of promotions spread across thousands of stores throughout the country.

Businesses say that such enormous class action cases put pressure on the employer to settle regardless of the validity of the claims, because of the cost of litigation and the potential awards at stake. Given the number of plaintiffs, 1.5 million women, and the size of Walmart, the largest employer in the country, the amount could be billions of dollars. As Walmart's brief said, "The class is larger than the active-duty personnel in the Army, Navy, Air Force, Marines, and Coast Guard - combined - making it the largest employment class action in history by several orders of magnitude."

Civil rights groups say that such class actions are the most effective way to make sure that businesses end discriminatory practices and pay appropriate damages for their actions.

The District Court ruled that the class action could proceed, as did the Court of Appeals by a 6 to 5 vote. One of the dissenters at the Court of Appeals noted that the plaintiffs held different jobs in different regions of the country. Some of them had female supervisors. He wrote that the female employees "have little in common but their sex and this lawsuit." ♦

City Reminds Residents To Keep Sidewalks Clear of Snow This Winter

The City of Bloomington Housing and Neighborhood Development Department (HAND) reminds you to keep your sidewalks, including walks and ramps leading to crosswalks, clear for pedestrian safety during the winter months.

Under the Bloomington Municipal Code, property owners must remove snow and ice from their sidewalks within 24 hours following the accumulation of snow or ice. Not complying with this ordinance could result in significant injuries to pedestrians commuting throughout the community and potential fines for property owners.

Tips for removing snow and ice from sidewalks include the following:

- Shovel carefully. Do not lift too much or it can lead to back strain.

- Clear the snow down to the sidewalk surface. If snowfall begins with a layer of ice, residents may want to consider spreading sand or cinders to help remove the ice and aid in traction.

- Break away heavy ice with an ice chipper or straight edge hoe. Deep digging may result in damage to the sidewalk.

- A good shovel with an ergonomic handle is a valuable tool when attempting to clear snow or ice.

HAND also reminds residents to plan ahead. Those leaving Bloomington during the winter should make arrangements to ensure their walks are kept clear. Residents with health concerns should talk to neighbors, neighborhood associations or churches about receiving assistance. ♦

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